IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGNIA
Alexandria Division

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2017 MAR 21 P 12: 27

JEROME GLASSER,

Plaintiff,

vs.

GABRIEL R. BARBOZA,
JORDAN L. MAISON,
JOSHUA L. DUNFORD,
CINELINX MEDIA,

Defendants.

Civil Action No. 1:17-CV-322-CMH/IDD

COMPLAINT FOR PATENT INFRINGEMENT AND COPYRIGHT INFRINGEMENT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff Jerome Glasser ("Plaintiff Glasser") and for his Complaint against Defendants states as follows:

NATURE OF THE ACTION

1. This is an action for willful patent infringement to disgorge the profits earned by Defendants which, but for their infringement, would otherwise have naturally gone to Plaintiff; and to stop each Defendant's continuing infringement of Plaintiff's granted U.S. Patent Registration No. 6,017,035 (hereinafter "the '035 Patent") entitled: *Method for playing an educational game,* which after full and fair examination was duly and legally issued to Jerome Glasser by the United States Patent and Trademark Office ("USPTO") on January 25, 2000 and which is in full force and effect. A copy of the '035 Patent is attached hereto as "Exhibit A".

2. This is an action for willful copyright infringement action to stop each Defendant's infringement of Plaintiff's Registered U.S. Copyright No. TX0005995224, entitled: "Reel Relations Guide" which, among other rights, entitles Plaintiff Glasser to make translations of his copyrighted Work into other languages, or make any other version thereof, and for which each Defendant has unabashedly taken credit, claiming it to be his own work. The copying certainly is

making more than half of Plaintiff Glasser's Work and, moreover—at the very least—constitutes a derivative version of Plaintiff Glasser's Work. Plaintiff Glasser has received no value from Defendant's deliberate taking of his Work, and has brought this action to vindicate his rights, recover damages, and to ask, as the law provides, that Defendants be required to disgorge their ill-gotten profits attributable to their intentional infringement of Plaintiff Glasser's intellectual property. U.S. Copyright Registration information relating to Plaintiff Glasser's work is attached as "Exhibit B".

PARTIES

3. Plaintiff Glasser is an individual residing in the Commonwealth of Virginia with a principal address located at: 2308 Mt. Vernon Avenue, #240, Alexandria, VA 22301 and is a first-named inventor and owner of United States Patent Registration No. 6,017,035 entitled: *Method for playing an educational game* (hereinafter the "'035 Patent"), which was filed on August 15, 1997 and granted on January 25, 2000.

4. Upon information and belief, Defendant Gabriel R. Barboza is an individual residing at: 4701 Monterrey Oak Blvd., Apt 326, Austin, TX 78749-1083.

5. Upon information and belief, Defendant Jordan L. Maison is an individual residing at: 2305 Alta Canada Lane, Apt 916, Fort Worth, TX 76177-8248.

6. Upon information and belief, Defendant Joshua L. Dunford is an individual residing at: 4753 Old Bent Tree Lane, #608, Dallas, TX 75287-7123.

7. Upon information and belief, Defendant Cinelinx Media is an unincorporated business entity having a principal place of business located at: 4701 Monterrey Oak Blvd., Apt 326, Austin TX 78749-1083.

JURISDICTION AND VENUE

8. This court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 (Federal Question), § 1332 (Diversity), § 1338(a) (Patents) and (Copyrights).

9. Defendants are subject to personal jurisdiction in this Court because, given their willful and knowing exploitations in the Commonwealth of Virginia represented by their infringing products, each Defendant could certainly reasonably anticipate being haled into a court in this Commonwealth. Each Defendant has enjoyed minimum contacts within the Commonwealth of Virginia; each Defendant has intentionally and purposefully availed himself or itself of the privileges, protections and benefits of conducting business in the Commonwealth of Virginia. More specifically, each Defendant, directly and/or through its intermediaries, makes, ships, distributes, uses, offers for sale, sells, and/or advertises (including via a sales-promoting web page) its products and services in the Commonwealth of Virginia, which products and services infringe the intellectual property rights conferred upon Plainitff Glasser, whose causes of action arise directly from each Defendant's business contacts and other activities in the Commonwealth of Virginia.

10. Upon information and belief, each Defendant has committed U.S. Patent Infringement in the Commonwealth of Virginia; each Defendant has committed U.S. Copyright infringement in the Commonwealth of Virginia; each Defendant solicits customers for its products and services in the Commonwealth of Virginia; each Defendant has participated in the sale to at least one paying customer who resides in the Commonwealth of Virginia.

11. Defendants are properly joined in this action pursuant to Rule 20(a) of the Federal Rules of Civil Procedure because Plaintiff Glasser is asserting claims against Defendants for which they are jointly and/or severally liable, or, in the alternative, a right to relief in respect of or arising out of the same series of transactions or occurrences, namely, the development of, advertising, offering for sale, and the provision of infringing products and services to customers through a website. Questions of law and/or fact common to all Defendants will arise in this action due to the close business relationship of the Defendants to each other and their shared customers.

12. Venue in this Court is proper pursuant to 28 U.S. C. §§ 1391(b) and 1391 (c), and 28 U.S.C. §§1400(b) and 1400(a) because Defendants are subject to personal jurisdiction in this Judicial District and have committed unlawful acts of U.S. Patent and Copyright infringement in this Judicial District.

PATENT IN SUIT

13. The '035 Patent is entitled: "*Method for playing an educational game.*"

14. The '035 Patent includes exemplary method independent Claim 1:

1. A method for playing a game with at least one player comprising the steps of:

providing a plurality of separate sets of game information, each set of game information having an identity of an actor, wherein the identity of an actor of one set of game information and the identity of an actor of any other set of game information are different;

randomizing or mixing said plurality of separate sets of game information;

a player randomly receiving a first set of game information and at least one second set of game information from said mixed plurality of separate sets of game information;

the player attempting to connect said random first set and said at least one random second set of game information via a motion picture in which the actor of said random first set of game information and the actor of said at least one random second set of game information each play at least one role in said motion picture.

BACKGROUND

15. Prior to filing the U.S. Patent Application for his game play method, Jerome Glasser learned of the existence of the concept of "Intellectual Property" and the vital importance of the role it historically has played—and still continues to play—in the successful functioning of U.S. Commerce. Thereafter—properly, as appropriate standards of American business behavior demands—he learned

to research U.S. Patent law in order to perform a comprehensive patent search relating to intellectual property, in order to ascertain whether his innovation which he discloses in the '035 Patent was "novel and unobvious". He invested significant time, efforts and funds to travel to visit personally the Virginia-based public search library of the USPTO in order to perform both a patent search and a non-patent literature prior art search, the type of searching which has been the customary and reasonably expected practice of those contemplating the introduction of new products into the stream of commerce within the United States for at least a century. Having conducted a thorough Prior Art Patent Search, he then filed a U.S. Patent Application which he successfully prosecuted *pro se* to grant, as indicated by the USPTO's conferring of U.S. Governmental Intellectual Property rights upon determining that his innovation was, indeed, "new, novel and unobvious." (It should be noted that at the time that this effort was undertaken, no online patent searching—either for pay or for free—was available, unlike the circumstances today in which a multitude of prior art search options exist, including the USPTO's own quality online searchable database, as well as that of Google Patents, both of which are easy and free to use.)

16. Based on the presumptively valid U.S. Patent rights conferred by the '035 Patent, Plaintiff Glasser also undertook to write—and did write and publish—a guidebook detailing with specificity the connections between motion picture actors and actresses, as well as other miscellaneous motion picture participants represented by "Wild Cards", and this endeavor occupied over a year of research and diligent toil. U.S. Copyright Applications relating to this guidebook and game play directions were subsequently filed, and did mature into a U.S. Copyright Registration.

17. Plaintiff Glasser personally produced two editions of his game with factories located in both the United States and in China. In anticipation of the China production endeavor, Plaintiff Glasser undertook to learn Mandarin Chinese, a language which he now speaks fluently.

18. Although Plaintiff Glasser's rights to exercise control relating to the commercial exploitation of the rights granted by the USPTO under the '035 Patent do not compel his actual use in commerce of any product falling within the scope of the '035 Patent Claims, nevertheless, Plaintiff Glasser did, indeed, introduce into the stream of U.S. commerce a game product called "REEL RELATIONS", and so he does commercially "practice" his innovation. His efforts to selectively attempt to place and to actually place the REEL RELATIONS game for sale for retail sale precludes any characterization of him, or any business entity with which he is associated, as a Non-Practicing Entity ("NPE").

19. In order to ensure that the packaging for the REEL RELATIONS game was professionally developed and executed, Plaintiff Glasser became a self-taught, Master Graphic Designer with an expertise relating to leading professional computer graphic design programs including Adobe Photoshop, Adobe Illustrator, and CorelDraw. Further, in order to ensure the development of an attractive, high-quality game and packaging, Plaintiff Glasser also benefited from the incorporation into the game of artwork created by a superlative, professional artist.

20. Plaintiff Glasser is currently the owner of the currently LIVE U.S. Trademark Reg. Ser. No. 4,275,150 for the Mark, "REEL RELATIONS", for Playing Cards and Card Games in International Class 28 and registered on January 15, 2013.

21. In 2006, during his first year at law school in New York, a law journal article that Plaintiff Glasser authored (which defended the parody use of illustrations of the type portrayed in his REEL RELATIONS game as meriting First Amendment Free Speech protection) was selected as the winning entry in the BMI Music Scholarship Law Student Essay Competition and subsequently accorded the honor of being published by the prestigious New York State Bar Association's *Entertainment, Arts and Sports Law Journal* (Spring, 2006).

22. Instructions for play of Plaintiff Glasser's patented game along with a guide that cross-referenced links were registered with the United States Copyright Office on May 20, 2004 under Registration No. TX0005995224. These rules are highly original and unique, and Defendants' infringing expression of such game rules are a distinct derivation of Plaintiff Glasser's game rules, as they capture the spirit of Plaintiff Glasser's game rules.

23. In August, 2016, by visiting the Kickstarter online website (www.kickstarter.com), Plaintiff Glasser became aware of Defendants' offer in exchange for valuable consideration—sales—of a game which infringes the claims of the '035 Patent, and the U.S. Copyright granted to Jerome Glasser, and which earned Defendants at least $36,184 to which they are not entitled.

24. Having had by this time significant exposure to the field of U.S. Patent and Trademark law, Plaintiff Glasser then searched for free on the United States Patent and Trademark Office's (TARR) database, and learned that Defendants have at all relevant times been aware of the existence of the concept of intellectual property, as well as its nature: that being rights to intangible property which can be owned/controlled by a specific individual and/or a business entity. The fact of such awareness is evidenced certainly by Defendant Barboza by virtue of his personally having elected to secure *pro se* precisely the type of intellectual property right for Defendants' infringing game product, called "*CINELINX*", that he and the other named Defendants have blatantly infringed which belong to Plaintiff Glasser and that Defendants continue to infringe.

25. Defendant Barboza applied for and secured trademark rights on a "1A" USE MARK, a trademark application category which requires as a filing basis "Actual Use" in *interstate* commerce in the United States. The currently LIVE Mark for which Defendant Barboza applied for trademark protection is "CINELINX", U.S. Trademark Reg. Ser. No. 4,723,393 for Board Games [and] Card Games in International Class 28 and registered on April 21, 2015. The Date of First Use Anywhere is

listed as February 15, 2014, and the Registered Owner is indicated as: "Barboza, Gabriel R / Individual UNITED STATES/P.O. Box 92244 Austin, TEXAS 78709."

26. Defendants certainly understood that by filing for *Federal* Trademark Registration which requires *interstate* sales that they could and very likely would be subject to personal jurisdiction for acts (or failure to perform legally required acts) in those jurisdictions into which they made sales.

27. Defendants demonstrated a sophisticated understanding of the both the existence and function of concept of "Intellectual Property", by having filed *pro se* for intellectual property protections which the U.S. Government convers via the authority it vests in the USPTO. Defendant Barboza had either actual or constructive notice regarding the existence of the claim staked by Plaintiff Glasser to his innovative method for playing an educational game and the rights awarded to him under the '035 Patent by the U.S. Government's Department of Commerce through the USPTO. The reason that Defendants can be ascribed such knowledge of the '035 Patent is that today, thanks to the maturity of the Internet, a prospective innovator/product developer has easy and free rights and capabilities to execute a comprehensive online U.S. Patent Search. Moreover, such a patent search is not even restricted exclusively to the U.S. Patent Office's own free database; today, Google Patents also serves as *yet another* easy and comprehensive patent search tool which also is *FREE!* (At the time of the filing of this suit, a search of Google Patents using the terms "motion picture actor game" reveals that Plaintiff Glasser's '035 Patent is the eighth (8^{th}) result on the first page.) Certainly, an inexpensive consultation with a Registered Patent Attorney or Agent which could have resulted in the commissioning of a common "Freedom-to-Operate" report would certainly have surely disclosed Plaintiff Glasser's '035 Patent which to date has been cited by 21 other U.S. Patent Applications.

28. The sole conclusion which is compelled is that Defendants were either aware of the existence of Plaintiff Glasser's '035 Patent—which they willfully disregarded—or they were "willfully blind" to the existence of Plaintiff Glasser's U.S. Patent rights conferred via the '035

Patent by having intentionally elected not to perform the most rudimentary patent search which could easily have been performed by the most novice online patent researcher—*and for free.* Therefore, Defendants had either: a) actual or b) constructive notice of Plaintiff Glasser's '035 Patent, thereby making their infringement readily characterizable as "willful."

29. Defendants' willful infringement not only usurped market opportunities rightfully reserved and secured by Plaintiff Glasser through the granting of the '035 Patent and the Registered U.S. Copyright protection he secured, but further, also deprived Plaintiff Glasser of the recognition which his much-earlier innovation merits.

30. None of the Defendants ever solicited or obtained permission from Plaintiff Glasser reproduce, modify, distribute or display any of the Work that is under U.S. Copyright Registration or to commercially exploit any product under the U.S. Patent Rights conferred upon Plaintiff Glasser by the USPTO under the '035 Patent.

PRAYER FOR JUDGMENT AND RELIEF

31. Plaintiff Glasser incorporates by this reference paragraphs (1-30) above as though fully set forth herein.

32. On information and belief, Defendants have directly infringed the '035 Patent by making, using, importing, offering for sale, and/or selling in the United States card game(s) covered by one or more claims of the '035 Patent.

33. On information and belief, Defendants' infringement of the '035 Patent has been and continues to be willful, and such infringement will continue unless Defendants are enjoined by this Court.

34. On information and belief, Defendants have directly infringed Plaintiff Glasser's U.S. Copright by making, using, importing, offering for sale, and/or selling in the United States card game(s) and/or mobile apps covered by his Registered U.S. Copyright.

35. On information and belief, Defendants are developing an electronic mobile app which will permit an even greater, more widespread infringement of Plaintiff Glasser's intellectual property rights.

36. On information and belief, Defendants' infringement of Plaintiff Glasser's U.S. Copright has been and continues to be willful, and such infringement will continue unless Defendants are enjoined by this Court.

37. As a consequence of Defendants' infringement complained of herein, Plaintiff Glasser has been damaged and will continue to sustain damages by such acts in an amount to be determined at trial, and will continue to suffer irreparable loss and injury.

38. W H E R E F O R E, Plaintiff Glasser respectfully requests judgment as follows:

First Claim for Relief

INFRINGEMENT OF U.S. PATENT 6,017,035

(A) Pursuant to 35 U.S.C. § 271, that judgment be entered for Plaintiff against Defendants and a determination be made that Defendants and those in privity with Defendants have directly infringed and/or contributorily infringed at least one or more of the claims of the '035 Patent, literally and/or under the doctrine of equivalents;

(B) Pursuant to 35 U.S.C. § 271, that judgment be entered for Plaintiff against Defendants and a determination be made that Defendants and those in privity with Defendants willfully acted with knowledge of the '035 Patent in suit.

(C) Pursuant to 35 U.S.C. § 283, that judgment be entered for Plaintiff against Defendants and an order issued that Defendants and those in privity with Defendants be enjoined from further acts of infringement with respect to the '035 Patent through the manufacture, use, import, offer for sale, and/or sale of infringing items;

(D) An order issued that Defendants assign to Plaintiff Glasser all right, title and interest in and to the "CINELINX" Registered U.S. Trademark;

(E) An order issued that Defendants turn over to Plaintiff Glasser and keep no copies of all customer lists generated by Defendants containing contact information relating to customers for the infringing CINELINX game;

(F) An order issued that Defendants assign to Plaintiff Glasser all right title and interest in the web domain address: www.cinelinx.com ;

(G) An order issued that Defendants turn over to Plaintiff Glasser and keep no copies of all marketing materials relating to the CINELINX game and U.S. Trademark;

(H) Pursuant to 35 U.S.C. § 284, that judgment be entered for Plaintiff against Defendants and that an award of damages to be paid by Defendants adequate to compensate Plaintiff Glasser for the infringement of the '035 Patent, and any continuing or future infringement up until the date such judgment is entered, including prejudgment interest, costs, and disbursements as fixed by the Court, and, if necessary to adequately compensate Plaintiff for Defendants' infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

(I) Pursuant to 35 U.S.C. § 284, an award of enhanced damages increasing damages up to three times the amount found or assessed for infringement by Defendants of the '035 Patent due to the willful and deliberate nature of the infringement;

(J) Pursuant to 35 U.S.C. § 285, a determination that this is an exceptional case and an assessment of reasonable attorneys' fees; and

(K) Such other and further relief as the Court deems equitable and just.

Second Claim for Relief

INFRINGEMENT OF THE U.S. COPYRIGHT ACT

(L) That judgment be entered for Plaintiff against Defendants and a declaration be issued that Defendants have willfully infringed Plaintiff's copyrighted Work in violation of the U.S. Copyright Act;

(M) That judgment be entered for Plaintiff against Defendants and a permanent injunction be issued requiring Defendants and their agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any one of them, to cease directly and indirectly infringing, and causing, enabling, facilitating, encouraging, promoting, inducing, and/or participating in the infringement of any of Plaintiff's rights protected by the Copyright Act.

(N) An order that Defendants assign to Plaintiff Glasser all right, title and interest in and to the "CINELINX" Registered U.S. Trademark;

(O) An order that Defendants turn over to Plaintiff Glasser and keep no copies of all customer lists containing contact information relating to customers for the CINELINX game;

(P) An order that Defendants turn over to Plaintiff Glasser all unsold or undelivered copies that have been made or used in violation of Plaintiff Glasser's exclusive rights;

(Q) An order that Defendants turn over to Plaintiff Glasser all printing plates, molds, masters, film negatives, computer files, papers and other mediums from which infringing copies may be made;

(R) An order that Defendants turn over to Plaintiff Glasser and keep no copies of all marketing materials relating to the CINELINX game and Mark;

(S) Pursuant to 35 U.S.C. § 285, a determination that this is an exceptional case;

(T) An award of reasonable attorneys' fees pursuant to 17 U.S.C. § 505 and/or the inherent powers of the Court and/or under other applicable law;

(U) That judgment be entered for Plaintiff against Defendants and an award of damages be rendered pursuant to 17 U.S.C. § 504(b), including actual damages, and the profits of Defendants as will be proven at trial, which, on information and belief, are believed to exceed $100 thousand dollars ($100,000) including a finding that Defendants are practical partners of each other and jointly and severally liable;

(V) Such other and further relief as the Court deems equitable and just.

JURY DEMAND

39. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Glasser hereby demands a trial by jury on all issues raised by the complaint which are properly triable to a jury.

Respectfully submitted to the Court,

Dated: **March 21, 2017**

By: JEROME GLASSER

Signature of Jerome Glasser
(703)475-2953
2308 MT. VERNON AVE, #240
ALEXANDRIA, VA 22301

CERTIFICATION

I declare under penalty of perjury that:

(1) No attorney has prepared, or assisted in the preparation of this document.

JEROME GLASSER
Name of *Pro Se* Party (Print or Type)

[signature]
Signature of *Pro Se* Party

Executed on: 3/21/17 (Date)

OR

(2) ______________________________
(Name of Attorney)

____
(Address of Attorney)

____
(Telephone Number of Attorney)
Prepared, or assisted in the preparation of, this document.

____
(Name of *Pro Se* Party (Print or Type)

____
Signature of *Pro Se* Party

Executed on: ____________________ (Date)